

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI

**BEFOR SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
MISS PADMAVATHY S. ACCOUNTANT MEMBER**

**ITA No. 1678/Mum/2024
(Assessment year: 2015-16)**

Union Bank of India Union Bank Bhavan 239, Vidhan Bhavan Marg Nariman Point, Mumbai-400 021 PAN: AAACU0564G	vs	Deputy Commissioner of Income- tax, Circle-(LTU) 2, Mumbai Room No.421, 4 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020
APPELLANT		RESPONDENT

Assessee by : Shri C Naresh
Respondent by : ShriKrishna Kumar SR. DR.

Date of hearing : 11/04/2025
Date of pronouncement : 23/04/2025

ORDER

PER ANIKESH BANERJEE, J.M:

The instant appeal of the assessee was filed against the order of the National Faceless Appeal Centre (NFAC), Delhi [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2015-16, date of order 16.02.2024. The impugned order emanated from the order of the National Faceless Assessment Centre, Delhi (in short, 'the A.O.')

passed under section 147 read with section 144 read with section 144B of the Act, date of order 30/03/2022.

2. The assessee has taken the following grounds of appeal:-

“Validity of assessment order

1.1 On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in upholding the order passed u/s 147 r.w.s 144 r.w.s 144B, even when no time was given to appellant to furnish objections to the draft assessment order.

Reopening of Assessment

2.1 On the facts and in the circumstances of the case and in law, the CIT(A) failed to appreciate that, AO reopened the assessment after a period of 4 years from the end of the assessment year even when there was no failure on the part of appellant to fully and truly disclose all information required for completion of assessment.

2.2 On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in upholding the reopening proceedings even when no new tangible material was found, and the reopening was based on materials already on record.

2.3 On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in upholding the reopening proceedings even when the reopening was only based on a change of opinion.

Exclusion of foreign income in computing Income under Normal Provisions and under MAT

3.1 On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in upholding the order of AO in not excluding the income of foreign branches in Dubai and Antwerp with whom India has entered into a Double Tax Avoidance Agreement (DTAA) u/s 90 of the Income-tax Act.

3.2 On the facts and in the circumstances of the case and in law, the Id. CIT(A) having held that the income of foreign branches is chargeable to tax ought to have directed the AO to tax the foreign income computed in accordance with

the Income-tax Act of the foreign countries and not the income computed in accordance with provisions of Indian Income-tax Act.

3.3 On the facts and in the circumstances of the case and in law, the Id. CIT(A) having held that the income of foreign branches is chargeable to tax ought to have directed the AO to grant credit for foreign taxes as per Double Tax Avoidance Agreement (DTAA).

Your appellant craves leave to add, to amend, and/or vary the grounds of appeal before or at the time of hearing.”

3. The brief facts of the case are that the assessee is a nationalized bank carrying on business of banking. The return of income was filed on 29.11.2015 declaring an income of Rs.3346.94 crore. The original assessment u/s 143(3) was completed on 27.03.2018 by making various disallowances against which the assessee filed an appeal before Ld. CIT(A) and then to Hon'ble ITAT. Subsequent to that the assessment which was completed u/s. 143(3) was reopened by issue of notice u/s 148 on 27.03.2021 i.e. after 4 years from the end of the relevant assessment year. The assessee filed the return of income U/s 148 of the Act and sought reasons for reopening which was given to assessee on 17.11.2021. The assessee filed its objections to reopening specifically stating that it was nowhere alleged in the notice that there is failure on the part of the assessee to furnish the details which were disposed of on 06.12.2021 mechanically without controverting the specific objections raised by the assessee. On the same day assessee was issued a notice u/s 143(2) of the Act and on 04.01.22 a notice u/s. 142(1) of the Act was issued calling for various particulars. The assessee submitted a detailed response on the details called for on 19.01.2022. Thereafter for more than 2 months there was no response from the Ld. AO. The assessee was served a draft assessment order dated 28.03.2022 requiring the assessee to furnish its

objections on the same date i.e. on 28.03.2022. The notice did not appear in e-filing portal on the morning of 28.03.2022 and it was appearing in the portal on 29.03.2022. The assessee tried to upload its objections on 29.03.2022 the provision for filing the same or for seeking a virtual hearing was closed and assessee could not respond to the draft assessment order. The assessment u/s 147 was passed on 30.03.2022 by finalizing the assessment based on the draft assessment order and the addition was confirmed amount to Rs. 65,03,12,137/- related income of foreign branches of the assessee in Dubai and Antwerp. The allegation of the assessee is that Ld. AO passed the order u/s. 147 without granting proper and meaningful opportunity to the petitioner to respond to the show cause notice. The assessee was not given any time to respond to the draft assessment order before the passing of the impugned assessment order dated 30.03.2022. The final order passed without giving any time to the assessee to respond cannot be said to be an opportunity given to assessee. The further grievance of the assessee is that the Ld. AO passed an order u/s 147 r.w.s 144B even when there was no new tangible material and by disposing off the objections raised by the assessee in a mechanical manner. The Ld. AO added to income of foreign branches with whom India had entered into a Double Tax Avoidance Agreement (in short DTAA) by ignoring the Article 7 of the DTAA. The Ld. AO brushed aside the decisions relied upon by assessee by simply stating that the case of the assessee is on different set of facts without even identifying as to how they are different. The Ld. AO did not consider the submissions made by assessee nor distinguished the case laws relied upon by assessee and added the amount of Rs. 65.03 crore to taxable income. The Ld. AO while relying on provisions of section 90(2) and 90(4) failed to note that while 90(2) also provides

for avoidance of double taxation 90(4) of the Act is not applicable as the assessee is a resident in India. The Ld. AO in the computation sheet has included income from other sources of Rs.2,48,54,335/- twice once along with the business income of Rs. 4107,01,46,237/- and again by separately including it under the head "Income from other sources." Aggrieved assessee challenged both the legal issue & merit before the Ld. CIT(A). The Ld. CIT(A) upheld the assessment order. Being aggrieved the assessee filed an appeal before us.

4. The Ld.AR filed a paper book containing pages 1-65 which is kept in the record. The Ld.AR argued that the assessee-bank filed an appeal before the Ld. CIT(A)-LTU challenging the various additions/disallowances made in the order passed u/s. 143(3) dated 27.03.2018 & challenging the jurisdiction of original assessment order. Subsequently, the above notice u/s 148 was issued on 27.03.2021 which is beyond four years from the end of the assessment year. Sec. 147 of the Act on Re-assessment states as under-

"If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such Income and also any other Income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or re-compute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned

Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued

under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year."

5. The Ld.AR argued that Section 147 provides that the Ld. AO can re-open an assessment made u/s. 143(3) of the Act if there is a failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment for the year under consideration. But in this case the claim in respect of exclusion of income of foreign branches was claimed in the return of income and the same was separately disclosed in the computation of income. Further during the scrutiny assessment proceedings u/s 143(3) the Ld. AO vide notice u/s 142(1) dated 14.03.2018 in para 19 which is annexed in APB pages 22-25, required the following on exclusion of foreign income.

"19) In computation of income profit of Dubai branch excluded from total Income as per Article 7 of DTAA is Rs. 13,00,96,542/-. You are required to explain why the above income should not be taxed in your hand in AY 2015-16."

In pursuance of the above letter, the assessee filed the following reply as per its letter dated 26.03.2018.

"The Bank carries on business in the said branches through permanent establishment situated therein. The Profits earned from the said branches constitute business income. As per Article 7 of DTAA between GOI & Govt. of respective countries the business income earned by these permanent establishment can be taxed only in those countries and accordingly since the profit as per the PIL Included the profit of these permanent establishment also, the same was reduced from taxable Income."

From the above submissions it can be clearly concluded exclusion of foreign income has been examined by the then Ld. AO and after having been satisfied with the submissions the claim had been allowed.

6. The Ld. AR stated that it has not failed to make return u/s. 139 nor has the assessee failed in responding to a notice Issued u/s. 142(1) and all the necessary details and explanations were provided during the scrutiny assessment proceedings as and when called for by the Ld. AO on a timely basis. Therefore, there has been no failure on the part of the assessee to disclose fully and truly all material facts with regard to the assessment and the assessment cannot be re-opened u/s. 147 of the Act for the year under consideration.

7. In argument, the Ld.AR invited our attention to the reasons recorded which was communicated by the Ld.AO during the assessment proceedings. The copy of the recorded reasons is affixed below:-

Annexure



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE DEPUTY
COMMISSIONER OF INCOME TAX
DCIT/ACIT, Cir.-3(4), Mumbai

To, UNION BANK OF INDIA H.NO.1-3 MAIN ROAD, HUZURNAGAR NALGONDA NALGONDA 508204, Telangana India	
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PAN: AAACU0564G	Assessment Year: 2015-16	Dated: 17/11/2021	DIN & Letter No : ITBA/AST/F/17/2021-22/1037026096(1)
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Sir/ Madam/ M/s,

Subject: Communication of reasons of reopening u/s 147 for A.Y -2015-16 in the case of UNION BANK OF INDIA reg.

The assessee had filed return of income on 29.11.2015 declaring its income of Rs. 3346,94,79,280/- under normal provisions of the Income Tax Act and book profit of Rs 2885,73,24,680/- u/s 115JB of the Income Tax Act. The case was selected for scrutiny and the assessment for AY 2015-16 was completed on 27.03.2018 determining income of Rs.4041,98,34,100/- under normal provisions of the Income Tax Act and Book Profit of Rs.5777,42,19,661/- u/s 115JB of the Income Tax Act.

2. Subsequently on perusal of the records it was observed that the assessee claimed exclusion of income of foreign branches located in Dubai and Antwerp to the extent of Rs.65.03 crore (Rs.65,03,12,137/-) as per Article 7 of DTAA r.w.s u/s 90 of the Act in respect of which taxes was paid in the respective countries which was allowed. As per the above notification and judicial pronouncement the exclusion of income of foreign branches was not in order and required to be considered for tax in the resident state of the resident assessee while computing total income of the assessee. However this was not done in the assessment and resulted in under assessment of income of Rs.65,03,12,137/-.

2.1 Therefore I am of the view that income to the extent of amount of Rs.65,03,12,137/-, as explained above, has escaped assessment.



Note: If digitally signed, the date of digital signature may be taken as date of document.
WORLD TRADE CENTRE - 1, CUFFEE PARADE, MUMBAI, Maharashtra, 400005
Email: MUMBAI.DCIT3.4@INCOMETAX.GOV.IN, Office Phone:02222167160

8. The Ld.AR further argued and respectfully relied on the order of the Hon'ble High Court of Bombay in the case of **Godrej Boyce Mfg Co. Ltd vs ACIT (2022) 140 taxmann.com 345 (Bom)**. The relevant paragraphs are reproduced as below:-

"5. Since this notice to reopen has been issued after expiry of four years from the end of relevant assessment year, as provided in the proviso of section 147 of the Act, onus is on Respondent to show that income has escaped assessment due to failure on the part of assessee to disclose truly and fully material facts required for assessment.

6. Mr. Pardiwalla submitted and rightly stated that reasons do not indicate anywhere that there has been failure to disclose. Use of expression "..... It is quite clear that assessee company has failed to disclose fully and truly all material facts necessary for assessment..." is only a bald statement used to get out of the restrictions imposed in section 147 of the Act.

7. Mr. Pinto relied upon a judgment of this Court in Crompton Greaves Ltd. v. Asstt. CIT [2015] 55 taxmann.com 59/229 Taxman 545 to submit that even if the reason for reopening does not specifically state that there was any failure on the part of petitioner to disclose fully and truly all material facts necessary for its assessment for the relevant assessment year, it will not be fatal to the assumption of jurisdiction under sections 147 and 148 of the Act. We would certainly agree with Mr. Pinto but as held in Crompton Greaves Ltd (supra), this is subject to the rider that there must be cogent and clear indication in the reasons supplied, that in fact there was failure on the part of the assessee to disclose fully and truly all the material facts necessary for its assessment. If the factum of failure to disclose can be culled from the reasons in support of the notice seeking to reopen assessment, that will certainly not be fatal to the assumption of jurisdiction under sections 147 and 148 of the Act. The Court held "However, if from the reasons, no case of failure to disclose is made out, then certainly the assumption of jurisdiction under sections 147 and 148 of the Act would be ultra vires, being in excess of the jurisdictional restraints imposed by the first proviso to section 147 of the Act".

8. Having considered the reasons we are satisfied that even the reasons does not indicate there was failure to disclose truly and fully material facts. In fact there was nothing to indicate non-disclosure. Reasons itself rely on the balance-sheet and computation of income filed.

9. In the circumstance, the Petition is allowed in terms of prayer clause (o), which reads as under

"(4) this Hon'ble Court may be pleased to issue a Writ of Certiorari or a writ in the nature of Certiorari or any other appropriate writ, order or direction under article

226 of the Constitution of India calling for the records of the Petitioner's case and after examining the legality and validity thereof quash and set aside the notice dated 25 March 2014 (Exhibit "A") issued by Respondents under section 148 of the Act seeking to reopen the assessment for the assessment year 2007-08, and order rejecting objections (Exhibit "W") dated 5 March, 2015."

10. *Petition disposed."*

9. The Ld.DR vehemently argued and relied on the order of the revenue authorities. The Ld. DR filed a written submission, containing pages 1 to 10 which is kept in record. The relevant paragraphs of the DR's submission is reproduced as below:-

"Akin to facts in above case no finding has been given in the assessment order, and it is also seen that the ratio laid down by the Hon'ble ITAT were available to the Ld.JAO, before the action of re-opening. Further, it is astounding to note that the same AR in Bank of India case has accepted the stand of the revenue on taxation of global income of a resident. Thus, it is a clear case that during the assessment proceedings, the appellant had not brought out material facts regarding the taxation of global income before the Ld.JAO.

Without prejudice to above, it is also prayed that Ld.JAO be directed to rectify the amount of total income concerned with the tax credit allowed by the Ld.JAO in the assessment order dated 27/03/2018 under section 143(3) of ITA 1961, wherein appellant has been clearly granted the credit of taxes paid under section 90/91 of ITA 1961. The mention in para 13 is 'Allow relief u/s 90/91 of the Act after verification. In such a case it will be an imperative to calculate the total income, after considering the tax credit availed, if any, by the appellant."

10. The appeal was subsequently scheduled for clarification following the submission made by the Ld. DR. Both parties were afforded a reasonable opportunity to be heard. During the hearing, the Ld. AR rebutted the submissions of the DR and presented the following arguments which are reproduced as below:-

“Observations of the Ld DR

(1) *The reassessment was necessitated on the issue of 'Exclusion of Income of foreign branches located in Dubai and Antwerp', which was not deliberated in the assessment order passed under section 143(3) dated 27/03/2018. It can be further seen that the question regarding the issue was asked in a routine/casual manner vide 142(1) notices dated 14/03/2018.*

Observation of the Appellant.

The issue of granting DTA relief was very much examined by the AO as can be seen from the Notice issued u/s 142 (1) and also as stated by the Ld DR. In the reply to Notice dated 14/03/20, in item No 19 the Appellant had clarified to the query raised by the AO that by virtue of Article 7 of respective DTAA, tax is eligible only in Foreign Countries. The observation that the issue was asked in a routine and casual manner cannot be considered as grounded on facts considering that this claim is made every year and clearly reflected in the computation of income. Besides merely for the reason that the notice mentioning only Dubai and not Antwerp cannot mean that the question was asked in a routine manner.

Observations of the Ld DR

(2) *The reply of the appellant also reflects casual manner, without expounding on the position of the law and facts. Important to note that on the date of reopening 27/03/2021; the judgment of the **Hon'ble ITAT Mumbai Bench in the case of Bank of India ITA No.1767 & 2048/Mum/2019 dated 11/12/2020(Bank of India vs. Assistant Commissioner of Income Tax, Circle 2(1)(1), Mumbai [2020] 122 taxmann.com 247 (Mumbai -Trib.) [11-12-2020])** was available. In that case*

the revenue's stand qua inclusion of income of foreign branches of the Indian Bank was accepted in toto by the AR in that case who is AR in UBI case qua present appeal.

Observations of the Appellant.

The appellant submits that the basis on which the Id. CIT-Dr concludes that the appellant had replied on a casual manner is not known. The appellant had clearly replied based on the law prevailing at that point of time where the courts had held that the income from foreign branches is not taxable in India based on Article 7 of DTAA.

As stated by DR, the decision in case of Bank of India was long after the assessment was completed. Hence there is no question of appellant expounding the principle in a manner contrary to its consistent position.

*Also, merely because a subsequent decision of the Tribunal is contrary to appellant's stand, the jurisdictional issue still remained whether there has been failure to disclose material facts necessary for assessment. Reliance is placed on the decision in *Voltas Vs ACIT (2012) 349 ITR 656 (Bom)*.*

*It is incorrect to state that the AR in case of Bank of India had accepted the issue of exclusion of income of foreign branches in toto. The AR had only accepted the fact that the issue was decided against in the latter decision in the case of *Technimount* even though the same was decided in favour of the appellant in *Bank of India's* case in the earlier years.*

Observations of the Ld DR

(3) *“Learned counsel has shown, in accepting the fact that even though the issue is covered in favour of the assessee by earlier decisions of the coordinate benches, these coordinate bench decisions cease to be binding judicial precedents inasmuch as reasoning adopted therein does not hold good any longer in the light of the decision in the case of Technimont (supra), admirable grace. respective treaty”*

Observation of the Appellant

The Ld DR had reproduced extensively from the observation of Hon'ble ITAT in ITA No 1767 & 2048 in the case of Bank of India v ACIT to argue the issue on merits whereas the jurisdictional issue whether AO had assumed jurisdiction when there was no failure on its part is not covered by said decision. Only when there was omission to disclose material fact, the extended period of jurisdiction is available to the AO. This has been repeatedly been held by various decisions of Hon'ble Bombay High court including:

Godrej & Boyce Manufacturing Co. Ltd V ACIT (140 taxmann.com 345)

Imperial consultants and Securities Ltd V DCIT (169taxmann.com 587)

Observations of the Ld DR

(4) *This clearly shows that the appellant and AR were quite aware of the position of the law as on the reopening notice issue date of 27/03/2021. It needs also be noted that the AR of the appellant and that of Bank of India are same.*

Observations of the Appellant

The issue is whether the decision of Hon'ble ITAT in Bank of India case operates retrospectively in a manner to disturb the concluded matters in respect of other appellants by vesting jurisdiction to AO for reopening concluded matters even when there is no failure on the part of appellant to disclose fully and truly all material facts necessary for assessment.

Observations of the Ld DR

(5) *The above judgment also relied on the **Tcchimont (P.) Ltd. vs. ACIT [2020] 116 taxmann.com 996 (Mum)**.....*

*'Section 9 of the Income-tax Act, 1961, read with article 7 of DTAA between India and UAE and article 7 of DTAA between India and Qatar -Income - Deemed to accrue or arise in India (Business profit - Services rendered outside India) - Assessment year 2014-15 - **Whether earnings of assessee, an Indian company from branch offices in UAE and Qatar are to be included in assessee's taxable income in India -Held, yes [Para 18] In favour of revenue"***

The relevant dismissed"

Observations of the Appellant

The issue is whether the decision of Hon'ble ITAT in Bank of India case operates retrospectively in a manner to disturb the concluded matters in respect of other appellants by vesting jurisdiction to AO for reopening concluded matters even when there is no failure on the part of appellant to disclose fully and truly all material facts necessary for assessment.

Observations of the Ld DR

(6) It may be noted that in the case of appellant vide ITA Nos. 1677 & 1676 /MUM/2024 for AY 2016-17 & 2017-18, vide order dated 11/07/2024, relief has been granted on the issue of validity of re-assessment proceedings, as follows-

9.7 In our opinion, after completion of the assessment u/s 143(3) of the Act, for reopening of the assessment, there has to be some trigger by way of either information received from the external source or from the internal source and without such trigger reopening of the assessment merely to relook into the assessment on the issues, which had been considered during the regular assessment proceedings, will amount to review of the assessment order by the Assessing Officer, which is not permitted in law under the provisions of section 147 of the Act. The Assessing Officer can only reassess the assessment wherever income escaped assessment, and not review the order passed by him. In view of the above discussion and respectfully following the decision of the Honble Bombay High Court in the case of HDFC Bank Ltd. (supra)allowed.

Observations of the Appellant

The above decision of Hon'ble ITAT is in the context of jurisdiction of AO to reopen the issue in respect of Asst years 2016-17 and 2017-18 which has been decided in favour of the Appellant. An issue which has been decided on jurisdiction cannot be re-agitated on merits an exercise of power without authority of Law is illegal in administration of justice and needs to be struck down.

Observations of the Ld DR

(7) However, in the year under consideration before the Hon'ble Bench, there As were material facts/information available on record, in form of decisions

passed in favour of revenue by the Hon'ble Jurisdictional Mumbai ITAT Bench, on the issue of inclusion of global income.

Observations of the Appellant

As stated before, the issue is whether when there is no failure on the part of assessee to disclose material facts, can the AO on the pretext of subsequent information, assume jurisdiction for reopening in the extended period of limitation to unsettle concluded issues.

Observations of the Ld DR

(8) It may be noted that same AR had fairly agreed to the issue in favour of revenue in the case of Bank of India as reproduced above. Thus, the facts in this case are on different footing and the case of the appellant is maned by the fact of non-disclosure of material fact and correct position of law enunciated by the Hon'ble ITAT.

Observations of the Appellant

It would be incorrect to state that AR had fairly agreed to the issue in favour of revenue in the case of Bank of India merely because view canvassed by the AR was not endorsed on merits of the case and that in each case facts and circumstances are not identical.

Observations of the Ld DR

(9) *The above timeline shows that the notice is issued after four years, and the position of law is extracted as follows:*

.....

As per the above section and explanation, in case of the assessment has been completed under section 143(3) and the same is subjected to reopening after four years, Ld.JAO need to keep in mind the following:

- a. Disclosure of*
- b. All the material facts*
- c. Necessary for his assessment*

It can be seen from the analysis of the facts that the Ld.JAO has in original assessment made no attempt to investigate from angle of applicability of section/s 9/90/91 of ITA 1961. The question was cursory in nature and not re deliberated in depth. The Computation of Income just mentions applicability of Article 7 of DTAA and Section 90 of ITA 1961. How the income is to be excluded, on what basis, what taxes have been paid, whether the ROI have been filed etc have not been disclosed in the ROI, which would have helped in making informed decision.

The reply of the appellant vide letter dated 26.03.2018 Sr.No.19, is even more casual. It has neither made the any attempt to expound of the legalities nor bought on record any facts regarding the payments of taxes in foreign jurisdiction. It does not explain its stand of excluding a part of the global income qua jurisdictions of Dubai and Antwerp which is patently inexplicable, considering the

provisions of section/s 9/90/91 of ITA 1961, which mandate that the global income is supposed to include all the income earned by the resident Indian Bank. Such a view cannot be countenanced in view of quoted/attached judgements of Hon'ble Mumbai ITAT in the case/s of Technimont (P) Limited and Bank of India.

Further, it is a fact that the Ld. JAO has not deliberated in any manner on this issue in the assessment order. There is not a whisper on the issue of inclusion or otherwise or the non-taxation of the stated global income. When can an issue of untaxed income, which is subject to reopening, would amount to change of opinion? Surely such a cursory mention of such an income of Rs.65.03 Crs (by no means a small amount) in the questionnaire and reply to be construed as "CHANGE OF OPINION"? As the issue has not been deliberated, no weightage can be granted qua such a non-scrutiny.

The issue is further confounded in a sense that Ld.AR who has been aware of the issue and the litigation history, has not mentioned the same in the reply before the Ld.JAO. The issue as per chart provided by the AR of the appellant in the hearing Hon'ble ITAT Mumbai Bench, in the case of Bank of India ITA No.1767 and 2048/Mum/2019 dated 11.12.2020 (Bank of India vs Assistant Commissioner of Income Tax, Circle 2(1)(1), Mumbai [2020] 122 taxmann.com 247 (Mumbai - Trib.) [11.12.2020]) had given a finding that the Ld./JAO was correct in calculating global income a stand which was accepted by the AR before the Hon'ble DB in case of Bank of India. At this stage it will also be interest of justice to persue the assessment records, which would clearly indicate the degree of the deliberation carried out on the issue by the Ld. JAO in the original assessment order.

Observations of the Appellant

The present case is of reopening after a period of four years from the end of the assessment year and hence the basic condition of failure on the part of appellant is nowhere contented by the Id. CIT(DR). Further the fact that the reasons recorded does not even contain a whisper of allegation of failure on the part of appellant to fully and truly disclose all the information has not been contradicted.

Notwithstanding the above:

The allegation that the AO in the original assessment has made no attempt to investigate cannot give raise to reopening especially after four years after the end of the assessment year.

When the appellant had clearly replied that the income is to be excluded as per Article 7 of DTAA and the AO being satisfied had not raised any further queries on the same the Id. CIT(DR) cannot at this stage allege that the reply was casual since appellant did not bring into record the details regarding tax paid in foreign jurisdiction, provisions of section 9 (which is not relevant to the issue)/ 90/91 (when no exclusion is claimed under the said section) and the non-existing decision on that date of Technimont (P) Ltd and Bank of India.

Further as had been repeatedly held by Courts the non-deliberation of the issue in the order u/s 143(3) will not give raise to escapement of income when there has been a full and true disclosure of facts by the appellant.

The Id. CIT-DR requires the AR of the appellant who was also the AR in the subsequent decision in case of Bank of India to predict at the time of assessment

and inform the AO that in the future years the hon'ble ITAT will decide the issue against the appellant in another case and failure to do so can make the reassessment valid. It is respectfully submitted that it is wholly incorrect to state that the AR has to predict the future and inform the AO of the decisions the failure of which will make all reassessments valid.

Observations of the Ld DR

(10) The above stand of the revenue has been endorsed in the case of Consolidated Photo & Finvest Ltd. vs. Assistant Commissioner of Income-tax (2006) 151 Taxman 41 (Delhi)/[2006] 281 ITR 394 (Delhi)/(2006) 200 CTR 433

Observations of the Appellant

We rely on the following observation of the Delhi High Court in the case of KLM Royal Dutch Airlines vs Asst Director of Income Tax (2007] 159 Taxman 191 (Delhi) viz.

"The Full Bench of the Delhi High Court in CIT v. Kelvinator of India Ltd. [2002] 256 ITR 1/ 123 Taxman 433 had opined that the amendments introduced into section 147 with effect from 1-4-1989 have not altered the position that a mere change of opinion of the Assessing Officer was not sufficient ground for embarking on reassessment. The Full Bench further observed that an order of assessment must be presumed to have been passed by the Assessing Officer concerned after due and proper application of mind. **In these circumstances the decision of the Division Bench Delhi High Court in Consolidated Photo & Finvest Ltd. v. Asstt. CIT[2006] 281 ITR 394/151 Taxman 41, in as much as it is irreconcilable with the views of the Full Bench, must be held not to lay down the correct law.** A Division Bench of a particular High Court is fully bound by the view preferred by a larger

Bench of that Court, regardless of the fact that another High Court prefers a different view. [Para 12]"

The Hon'ble Bombay High Court in the case of Clear Media (India) (P) Ltd (150 taxmann.com 52) clearly held that based on the decision in the case of KLM Royal Dutch Airlines, the decision of Consolidated Photo & Finvest Ltd is no longer good law."

11. We have heard the rival submissions and perused the documents available on record. Upon examination, we find that the reasons recorded by the Ld. AO for reopening the assessment were done in a mechanical manner and only after the lapse of four years from the end of the relevant assessment year. It is a settled principle of law that reassessment cannot be initiated merely on account of a change of opinion. Furthermore, the Ld. AO has failed to establish, based on the recorded reasons, that the assessee had not made a full and true disclosure of all material facts necessary for the assessment. During the scrutiny assessment proceedings conducted under Section 143(3) of the Act, the issue in question was raised, and the assessee duly explained the same in response to a notice issued under Section 142(1) of the Act. Despite this, the Ld. AO has sought to reassess the same issue, thereby reopening the assessment proceedings on identical grounds, which constitutes a clear case of "change of opinion."

11. Upon review of the records, it is evident that in response to the notice under Section 142(1) of the Act, the issue concerning the exclusion of foreign income earned in Dubai and Antwerp was specifically raised in Point No. 19 of the said notice. The assessee furnished complete details and explanations in support of its claim. The Ld. AO had duly considered and applied his mind while determining

whether the foreign branch income was to be excluded. Only after such due application of mind, the Ld. AO allowed the said claim in the original assessment.

12. The reopening of the assessment proceedings under Section 147 of the Act, on the pretext that the assessee failed to disclose full and true material facts regarding the exclusion of foreign income despite detailed explanations and submissions made during the original scrutiny assessment—amounts to an impermissible "change of opinion." It is a well-settled position in law that reassessment proceedings cannot be initiated merely because the Assessing Officer intends to take a different view on the same set of facts that were already examined during the original assessment.

The Hon'ble Delhi High Court, in **CIT v. Kelvinator of India Ltd. [2002] 123 Taxman 433 (Del. FB)**, has categorically held that:

"21. Another aspect of the matter also cannot be lost sight of. A statute conferring an arbitrary power may be held to be ultra vires article 14 of the Constitution of India. If two interpretations are possible, the interpretation which upholds constitutionality, it is trite, should be favoured.

In the event it is held that by reason of section 147 if the ITO exercises its jurisdiction for initiating a proceeding for reassessment only upon mere change of opinion, the same may be held to be unconstitutional. We are, therefore, of the opinion that section 147 does not postulate conferment of power upon the Assessing Officer to initiate reassessment proceeding upon his mere change of opinion.

We, however, may hasten to add that if 'reason to believe' of the Assessing Officer is founded on an information which might have been received by the Assessing Officer after the completion of assessment, it may be a sound foundation for exercising the power under section 147 read with section 148.

22. We are unable to agree with the submission of Mr. Jolly to the effect that the impugned order of reassessment cannot be faulted as the same was based on information derived from the tax audit report. The tax audit report has already been submitted by the assessee. It is one

thing to say that the Assessing Officer had received information from an audit report which was not before the ITO, but it is another thing to say that such information can be derived by the material which had been supplied by the assessee himself.

23. We also cannot accept submission of Mr. Jolly to the effect that only because in the assessment order, detailed reasons have not been recorded on analysis of the materials on the record by itself may justify the Assessing Officer to initiate a proceeding under section 147. The said submission is fallacious. An order of assessment can be passed either in terms of sub-section (1) of section 143 or sub-section (3) of section 143. When a regular order of assessment is passed in terms of the said sub-section (3) of section 143, a presumption can be raised that such an order has been passed on application of mind. It is well-known that a presumption can also be raised to the effect that in terms of clause (e) of section 114 of the Indian Evidence Act the judicial and official acts have been regularly performed. If it be held that an order which has been passed purportedly without application of mind would itself confer jurisdiction upon the Assessing Officer to reopen the proceeding without anything further, the same would amount to giving premium to an authority exercising quasi-judicial function to take benefit of its own wrong.

For the reasons aforementioned, we are of the opinion that answer to the question raised before this Bench must be rendered in the affirmation, i.e., in favour of the assessee and against the revenue. No order as to costs."

The Hon'ble Supreme Court, in **CIT v. Kelvinator of India Ltd. [2010] 187 Taxman 312**, affirmed this view, holding that reassessment must be based on "tangible material" that was not previously considered during the original assessment.

Similarly, the Hon'ble Bombay High Court, in **Hindustan Unilever Ltd. vs. DCIT-1(1)(2), Mumbai, 131 taxmann.com 166**, held that when the Assessing Officer has completed the assessment under Section 143(3) based on an examination of the assessee's books of accounts and has allowed a particular claim, he cannot later reopen the assessment based on the same material by merely taking a different view.

13. In the present case, the assessee had disclosed all material facts concerning the exclusion of foreign income as per Article 7 of the DTAA between the Government of India and the respective foreign countries. During the reassessment proceedings, the assessee raised objections on the ground that there was no "tangible material" to justify the reopening. However, the Ld. AO failed to consider the settled legal position under Section 147 of the Act, which mandates that reassessment can only be initiated when there is a failure to disclose fully and truly all material facts necessary for the assessment.

In light of the decisions in **Kelvinator of India Ltd.** (supra), **Godrej Boyce Mfg Co. Ltd** (supra) and **Hindustan Unilever Ltd.** (supra), we hold that the reopening of assessment in the present case is legally unsustainable. Consequently, the impugned reassessment order is set aside, and the notice issued under Section 148 of the Act is quashed. As a result, the addition of Rs.65,03,12,137/- made in the reassessment proceedings is deleted.

14. Since the Ld. AR has only argued on legal grounds, the merits of the case remain academic in nature.

15. In the result appeal of the assessee bearing **ITA No.1678/Mum/2024** is allowed.

Order pronounced in the open court on 23rd day of April 2025.

Sd/-

(MISS PADMAVATHY S.)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 23/04/2025

Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar), ITAT, Mumbai